

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-208652

DATE: June 6, 1983

MATTER OF: Holmes & Narver Services, Inc.

DIGEST:

1. Protest that protester's proposal, lower in cost than awardee's, offered equal technical competence and therefore was of greater value to Government is denied, since the successful proposal reasonably was rated better technically, the evaluated cost difference was not great, and technical considerations were of greater importance to Government than cost.
2. Claim for proposal preparation cost is denied where there is no showing that the Government acted arbitrarily or capriciously in rejecting the proposal.

Holmes & Narver Services, Inc. protests the award of a cost-plus-award fee contract to Boeing Services International, Inc. by the Department of the Air Force under request for proposals (RFP) No. F61546-82-R0017. The RFP was for providing base maintenance services at military installations in Greece for a period of 1 year with options for 4 additional years.

Holmes protests that the Air Force awarded the contract to a higher-cost offeror whose proposal was relatively equal from a technical standpoint to Holmes' and that the Air Force has not released information concerning the evaluation of proposals. Holmes also claims reimbursement for the cost of preparing its proposal.

We deny the protest and the claim.

The evaluation of proposals was conducted under the provisions of Air Force Regulation (AFR) 70-15 (April 16, 1976). Under that regulation, the responsibilities for the evaluation and selection process were divided among a Source Selection Evaluation Board (SSEB), which evaluates proposals and develops summary facts and findings; a

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Source Selection Advisory Council (SSAC), which analyzes the SSEB results for the Source Selection Authority (SSA); and the SSA, who selects an offeror for contract award. Award to Boeing, the long-term incumbent, followed the formal source selection process which resulted in the decision that selection of Boeing's proposal, rather than that submitted by Holmes, would be more advantageous to the Government. While our Office has been furnished the evaluation reports and other relevant exhibits concerning this protest, the agency considers these documents to be privileged and has not provided them to the protester. Although we therefore are unable to reveal the numerical ratings and cost details concerning the evaluation, our decision is based on a review of all the reports and exhibits.

Section M of the RFP set forth the four significant evaluation factors to be evaluated in reviewing the proposals:

"(1) TECHNICAL OPERATIONS:

- (a) Understanding of Technical Functions
- (b) Identification and Use of Resources
- (c) Past Performance

"(2) PROGRAM MANAGEMENT

- (a) Soundness of Management Approach
- (b) Comprehension of Program Management Statement of Work
- (c) Past Performance
- (d) Planning

"(3) RISK

"(4) COST

- (a) Compatibility with Technical Proposal
- (b) Understanding of Greek Labor Practices
- (c) Attainability of Proposed Costs."

The solicitation provided that factor (1), which was of greater importance than factor (2), would be used to rate each individual section of the RFP's statement of work (civil engineering, full food service, motor vehicle management and maintenance, housing services, office machine repair, and furniture repair). Further, an assessment of risk (factor (3)) would be made to determine any potential impact on military mission based on results obtained from evaluation of factors (1) and (2). Risk and cost (factors (3) and (4)), however, were not rated. Award would be made based on the most advantageous offer meeting the Government's requirements.

While 10 proposals were received by the closing date, and four offerors subsequently were determined to be within the competitive range, we will limit our discussion to the proposals of Holmes and Boeing.

The SSEB found that Holmes' proposal addressed all requirements for civil engineering set forth in the RFP's statement of work. The SSEB, however, considered Holmes' management philosophy and manning to be weak and inconsistent, with overall proposed manning below the Government's estimate. With regard to understanding of technical functions (factor (1)(a)), Holmes demonstrated a "superb job" in setting forth the required tasks to be performed. Further, numerous areas of Holmes' proposal were identified as strengths: financial management, administration, training program, cost accounting, construction management, as well as several other areas. Deficiencies noted were considered minor. With respect to identification and use of resources (factor (1)(b)), the SSEB found that a major risk existed since Holmes "dual hatted" an excessive number of managerial positions, thereby failing to demonstrate necessary control or guidance to insure adequate mission support. The SSEB noted, however, that Holmes possessed solid experience in civil engineering. Holmes also demonstrated an acceptable level of expertise under factor (1) in the other elements of the statement of work.

In the area of program management (factor (2)), the SSEB noted that Holmes proposed a management organization consisting of various managers reporting to a program manager, with two base managers "dual hatted" with the Base Civil Engineer. Holmes' management concept was to provide total support services through planning and use of proven approaches to program management. The SSEB also stated that Holmes had extensive experience with excellent ratings in management areas. The SSEB noted a weakness in Holmes' proposed initial use of a manual system instead of an automated data management system.

The SSEB, in evaluating Boeing's proposal with respect to technical operations (factor (1)), rated the proposal superior to Holmes' in the area of civil engineering. The SSEB found that Boeing also addressed all items in the statement of work and possessed extensive civil engineering experience. As the incumbent contractor, Boeing was found to have an exceptional understanding of service requirements, engineering design, and contract programming. Boeing's proposal identified highly qualified individuals, and its manning levels met the Government's estimate. Some minor deficiencies were found in insignificant areas. The SSEB found that Boeing demonstrated a complete understanding of all technical functions, and that its proposed use of resources was acceptable. The SSEB, in its narrative evaluation and scoring, generally rated Boeing higher than Holmes in the other areas of technical operations, such as food service and furniture repair.

The SSEB also rated Boeing's proposal higher than Holmes' in the area of program management (factor (2)). The SSEB noted that Boeing was an incumbent with established programs, policies, procedures, organizational structure, and personnel resources available. Further, Boeing proposed extensive use of data processing equipment, and its proposal showed strong experience in program management.

The SSEB's summary of the evaluation results characterized Holmes' proposal as detailed, thorough and concise in the area of technical operations. Of the 18 adjectival ratings assigned for that factor (6 statement of work

elements x 3 evaluation factors), the offer received 5 "excellent" ratings, 5 "very good" ratings, 5 "acceptable" ratings, 1 "marginal" rating, and 2 "unacceptable" ratings. In the area of program management, the SSEB, although finding some weaknesses, generally rated the protester's proposal from "acceptable" to "excellent" in the various subcategories evaluated.

The SSEB, however, rated Boeing's proposal higher in its summary evaluation. In the area of technical operations, the SSEB summary stated that Boeing demonstrated exceptional understanding of the technical aspects, and received a higher rating overall than Holmes ("excellent" in five areas, "very good" in six, "acceptable" in seven). The SSEB also regarded Boeing's proposal as superior to Holmes' in all areas of program management (adjectival ratings of "excellent" and "very good" in all four areas of program management).

With respect to cost evaluation, the SSAC, after evaluating the SSEB's findings, adjusted each offeror's proposed cost to determine the "most probable cost" over a 5-year period. While our review shows that Holmes' estimated cost was somewhat lower than that of Boeing, the SSAC found Holmes' "total contract overrun cost risk," that is, the difference between the offeror's proposed cost and the "most probable cost," to be higher than Boeing's. The SSAC therefore recommended award to Boeing because its proposal was judged to be an excellent technical proposal in the major technical functions while presenting a more advantageous overall cost risk to the Government than Holmes' proposal. The SSA subsequently selected Boeing for award.

In reviewing selection decisions, we have pointed out that the contracting agency is primarily responsible for determining which technical proposal best meets its needs, since it must bear the major burden of any difficulties incurred by reason of a defective evaluation. Training Corporation of America, Inc., B-181539, December 13, 1974, 74-2 CPD 337. Accordingly, we consistently have held that procuring officials enjoy a reasonable range of discretion in the evaluation of proposals and in the determination of

which offer or proposal is to be accepted for award, and that such determinations are entitled to great weight and must not be disturbed unless shown to be unreasonable or in violation of the procurement statutes or regulations. See METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. Further, where the solicitation indicates that technical excellence is more important than cost considerations to the procuring agency, we have upheld awards to concerns submitting superior technical proposals even though the awards were made at costs higher than those proposed in lower rated technical proposals. See Riggins & Williamson Machine Company, Inc.; ENSEC Service Corporation, 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

As stated previously, the Air Force has not released any of its evaluation reports to the protester. Thus, the sole factual basis for Holmes' allegations concerning improper evaluation is the Air Force's decision to select Boeing for award despite the submission by Holmes of a sound technical proposal. Our review of the record, however, provides no legal basis to object to the Air Force's decision. First, the Air Force strictly adhered to the stated RFP evaluation criteria. Second, Holmes' proposal, while receiving high ratings, was not evaluated to be technically equal to Boeing's proposal nor was its evaluated cost significantly lower than that of Boeing's. The report does indicate that Holmes received high scores in many evaluation categories, and that its proposal was recognized as reflecting a good understanding of the technical objectives. Nonetheless, the report further indicates that in most categories Boeing's proposal was rated higher, in some cases substantially so, and that even where Holmes was regarded as "very good," Boeing was regarded as "excellent." From our review of the record, it appears that the Air Force evaluators could rationally evaluate the proposals as they did. The fact that the protester objects to the evaluation, and perhaps believes its own proposal was better than the Air Force does not render the evaluation unreasonable. Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

We recognize that Boeing's edge in the SSEB analysis may have been attributable in part to the advantages of that firm's incumbency, in that Boeing was able to offer

better technical presentations and to exhibit better understanding of statement of work requirements for some areas than was Holmes. That fact, however, does not mean that the evaluation and the selection were improper. We have long recognized that certain firms may enjoy a competitive advantage by virtue of their own incumbency or their own particular circumstances. Such an advantage is unfair only where it results from a preference or unfair action by the Government. Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. The record does not support a conclusion that the Air Force acted unfairly with respect to Holmes or showed any particular preference to Boeing; rather, given the circumstances of this case, it appears that the Air Force made a reasonable judgment that award to Boeing was more advantageous to the Government.

Finally, Holmes complains that it unsuccessfully has attempted to obtain information concerning the evaluation of its proposal from the Air Force under the Freedom of Information Act (FOIA). As Holmes recognizes, however, our Office has no authority under FOIA to determine what information must be disclosed by Government agencies. While information in an agency report which the agency believes is exempt from disclosure under FOIA will be considered by our Office in reaching a decision on the merits of the protest, we will not disclose it outside the Government. The protester's recourse in such situations is to pursue its disclosure remedy under the procedures provided by the statute itself. INTASA, B-191877, November 15, 1978, 78-2 CPD 347. In this case, the agency report in fact contains sufficient documentation to support the selection decision made by the Air Force. We have carefully reviewed and considered it in light of the allegations raised by Holmes, and have concluded that the record on the whole does not support these allegations.

The protest is denied.

Holmes also has requested reimbursement for the costs of preparing its proposal. Such costs can only be

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recovered, however, if the Government has acted arbitrarily or capriciously in rejecting a proposal. See Space-saver Systems, Inc., B-197174, August 25, 1980, 80-2 CPD 146. In view of our conclusions above, the claim is denied.

for *Milton J. Forster*
Comptroller General
of the United States